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Attorneys for Plaintiff Jeremy Bauman

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JEREMY BAUMAN, individually and on behalf of
all persons similarly situated,

Plaintiffs,

vs.

DAVID SAXE, et al,

Defendants.

Case No.: 2:14-cv-01125-RFB-PAL

**DECLARATION OF ALBERT H. KIRBY
IN SUPPORT OF PLAINTIFFS'
RESPONSE IN OPPOSITION TO
DEFENDANT TWILIO, INC.'S MOTION
FOR SANCTIONS**

BJIAN RAZILOU, individually, and on behalf of all
others similarly situated,

Plaintiff,

vs.

V THEATER GROUP, LLC, et al.

Defendants.

In consolidation with
Case No.: 2:14-cv-01160-RFB-PAL

**DECLARATION OF ALBERT H. KIRBY IN SUPPORT OF PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION**

I, Albert H. Kirby, declare as follows:

1. I am attorney of record for Plaintiff Jeremy Bauman in this action. I am over the age of 18 years. I am competent to testify as to the matters stated below. I make this declaration based upon my own personal knowledge.

2. Attached as **Exhibit 1**, **Exhibit 2**, and **Exhibit 3** are documents that I received from the Saxe Defendants' counsel in June 2015. (I added highlights to some pertinent portions of Exhibit 1.) These are just some of the documents that I obtained which seem to purport to be email communications involving Twilio. When merits discovery begins in this case, I intend to seek discovery from Twilio related to these documents, depositions of the three apparent employees of Twilio who authored these documents, depositions of other persons with Twilio knowledgeable about the technology at issue in this case, and depositions of at least one former employee of the Saxe Defendants who is referenced in these documents. This is not all the merits discovery that I intend to pursue, but it is significant portion of the merits discovery that I intend to seek related to my client's claims against Twilio. I believe that all such discovery will help illuminate the truth of my client's claims and the defenses that Twilio asserts against them.

3. On or about September 16, 2016, Twilio's counsel engaged in a telephone conference in which I participated. Twilio's counsel attempted to dissuade me from filing the Second Amended Complaint with claims against Twilio. Twilio's counsel indicated that a claim filed against Twilio would be considered by Twilio to be against its business model and thereby would be defended aggressively. I understood Twilio's counsel to be threatening a lot of motions and other effort to make pursuing claims against Twilio not worth the resources and risk that my client and I would expend and incur. As Twilio's counsel was relatively new to the case and had substituted counsel that had withdrawn, I attempted to educate Twilio in broad strokes as to facts, including Twilio's own emails produced by the Saxe Defendants in discovery, that make it seem likely that merits discovery will support my client's claims. At that time, Twilio's new counsel indicated that he had not yet received Twilio's complete file from Twilio's former

1 counsel and therefore did not yet have all the materials I mentioned. From a discussion in 2015
2 involving Twilio's former counsel of record, I was informed and believed that Twilio had
3 previously obtained the documents I referenced.

4 4. Attached as **Exhibit 4** is a copy of a letter and a draft motion that I received in the
5 mail subsequent to my conversation with Twilio's counsel. Not attached are the exhibits that
6 accompanied the draft motion.

7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct. Dated this 5th day of December 2016.

9 /s/ Albert H. Kirby
10 Albert H. Kirby
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CERTIFICATE OF SERVICE

I certify that the foregoing document is filed or will be filed through the Court's ECF system and thereby will be sent electronically to the registered participants identified on the Notice of Electronic Filing on today's date.

DATED: December 5, 2016

/s/ Albert H. Kirby
Albert H. Kirby